

1  
2  
3  
4  
5  
6  
7  
8 IN RE EX PARTE APPLICATION OF  
9 MITSUKI KUMADA,  
10 Applicant.

Case No. 22-mc-80095-VKD

11  
12  
13  
14  
**ORDER FOR REASSIGNMENT TO A  
DISTRICT JUDGE**

15  
16  
17  
18  
19  
**REPORT AND RECOMMENDATION  
RE EX PARTE APPLICATION FOR  
ORDER PURSUANT TO 28 U.S.C.  
§ 1782**

20  
21  
22  
23  
24  
25 Re: Dkt. No. 1

26  
27  
28 Applicant Mitsuki Kumada has filed an ex parte application for an order pursuant to 28  
U.S.C. § 1782 authorizing service of a subpoena for documents on Google LLC (“Google”). Dkt.  
No. 1. Although the proposed subpoena is directed to Google, Dr. Kumada says he will use the  
subpoena to obtain information about the user(s) of certain Google accounts. *See* Dkt. No. 1 at 2-  
3.

29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000  
1001  
1002  
1003  
1004  
1005  
1006  
1007  
1008  
1009  
1000  
1001  
1002  
1003  
1004  
1005  
1006  
1007  
1008  
1009  
1010  
1011  
1012  
1013  
1014  
1015  
1016  
1017  
1018  
1019  
1010  
1011  
1012  
1013  
1014  
1015  
1016  
1017  
1018  
1019  
1020  
1021  
1022  
1023  
1024  
1025  
1026  
1027  
1028  
1029  
1020  
1021  
1022  
1023  
1024  
1025  
1026  
1027  
1028  
1029  
1030  
1031  
1032  
1033  
1034  
1035  
1036  
1037  
1038  
1039  
1030  
1031  
1032  
1033  
1034  
1035  
1036  
1037  
1038  
1039  
1040  
1041  
1042  
1043  
1044  
1045  
1046  
1047  
1048  
1049  
1040  
1041  
1042  
1043  
1044  
1045  
1046  
1047  
1048  
1049  
1050  
1051  
1052  
1053  
1054  
1055  
1056  
1057  
1058  
1059  
1050  
1051  
1052  
1053  
1054  
1055  
1056  
1057  
1058  
1059  
1060  
1061  
1062  
1063  
1064  
1065  
1066  
1067  
1068  
1069  
1060  
1061  
1062  
1063  
1064  
1065  
1066  
1067  
1068  
1069  
1070  
1071  
1072  
1073  
1074  
1075  
1076  
1077  
1078  
1079  
1070  
1071  
1072  
1073  
1074  
1075  
1076  
1077  
1078  
1079  
1080  
1081  
1082  
1083  
1084  
1085  
1086  
1087  
1088  
1089  
1080  
1081  
1082  
1083  
1084  
1085  
1086  
1087  
1088  
1089  
1090  
1091  
1092  
1093  
1094  
1095  
1096  
1097  
1098  
1099  
1090  
1091  
1092  
1093  
1094  
1095  
1096  
1097  
1098  
1099  
1100  
1101  
1102  
1103  
1104  
1105  
1106  
1107  
1108  
1109  
1100  
1101  
1102  
1103  
1104  
1105  
1106  
1107  
1108  
1109  
1110  
1111  
1112  
1113  
1114  
1115  
1116  
1117  
1118  
1119  
1110  
1111  
1112  
1113  
1114  
1115  
1116  
1117  
1118  
1119  
1120  
1121  
1122  
1123  
1124  
1125  
1126  
1127  
1128  
1129  
1120  
1121  
1122  
1123  
1124  
1125  
1126  
1127  
1128  
1129  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1150  
1151  
1152  
1153  
1154  
1155  
1156  
1157  
1158  
1159  
1150  
1151  
1152  
1153  
1154  
1155  
1156  
1157  
1158  
1159  
1160  
1161  
1162  
1163  
1164  
1165  
1166  
1167  
1168  
1169  
1160  
1161  
1162  
1163  
1164  
1165  
1166  
1167  
1168  
1169  
1170  
1171  
1172  
1173  
1174  
1175  
1176  
1177  
1178  
1179  
1170  
1171  
1172  
1173  
1174  
1175  
1176  
1177  
1178  
1179  
1180  
1181  
1182  
1183  
1184  
1185  
1186  
1187  
1188  
1189  
1180  
1181  
1182  
1183  
1184  
1185  
1186  
1187  
1188  
1189  
1190  
1191  
1192  
1193  
1194  
1195  
1196  
1197  
1198  
1199  
1190  
1191  
1192  
1193  
1194  
1195  
1196  
1197  
1198  
1199  
1200  
1201  
1202  
1203  
1204  
1205  
1206  
1207  
1208  
1209  
1200  
1201  
1202  
1203  
1204  
1205  
1206  
1207  
1208  
1209  
1210  
1211  
1212  
1213  
1214  
1215  
1216  
1217  
1218  
1219  
1210  
1211  
1212  
1213  
1214  
1215  
1216  
1217  
1218  
1219  
1220  
1221  
1222  
1223  
1224  
1225  
1226  
1227  
1228  
1229  
1220  
1221  
1222  
1223  
1224  
1225  
1226  
1227  
1228  
1229  
1230  
1231  
1232  
1233  
1234  
1235  
1236  
1237  
1238  
1239  
1230  
1231  
1232  
1233  
1234  
1235  
1236  
1237  
1238  
1239  
1240  
1241  
1242  
1243  
1244  
1245  
1246  
1247  
1248  
1249  
1240  
1241  
1242  
1243  
1244  
1245  
1246  
1247  
1248  
1249  
1250  
1251  
1252  
1253  
1254  
1255  
1256  
1257  
1258  
1259  
1250  
1251  
1252  
1253  
1254  
1255  
1256  
1257  
1258  
1259  
1260  
1261  
1262  
1263  
1264  
1265  
1266  
1267  
1268  
1269  
1260  
1261  
1262  
1263  
1264  
1265  
1266  
1267  
1268  
1269  
1270  
1271  
1272  
1273  
1274  
1275  
1276  
1277  
1278  
1279  
1270  
1271  
1272  
1273  
1274  
1275  
1276  
1277  
1278  
1279  
1280  
1281  
1282  
1283  
1284  
1285  
1286  
1287  
1288  
1289  
1280  
1281  
1282  
1283  
1284  
1285  
1286  
1287  
1288  
1289  
1290  
1291  
1292  
1293  
1294  
1295  
1296  
1297  
1298  
1299  
1290  
1291  
1292  
1293  
1294  
1295  
1296  
1297  
1298  
1299  
1300  
1301  
1302  
1303  
1304  
1305  
1306  
1307  
1308  
1309  
1300  
1301  
1302  
1303  
1304  
1305  
1306  
1307  
1308  
1309  
1310  
1311  
1312  
1313  
1314  
1315  
1316  
1317  
1318  
1319  
1310  
1311  
1312  
1313  
1314  
1315  
1316  
1317  
1318  
1319  
1320  
1321  
1322<br

1

## REPORT AND RECOMMENDATION

2

### I. BACKGROUND

3

According to the application, Dr. Kumada is the owner of an ophthalmology clinic called “Kumada Eye Clinic” in Gifu, Japan. Dkt. No. 1 at 1. Dr. Kumada says that sometime before September 14, 2020 an individual using a Google account with an unknown name, added an incorrect location for his clinic, without the clinic’s permission. Dkt. No. 1 at 3; Dkt. No. 1-1 ¶ 15. Dr. Kumada further states that in April and June 2021, two anonymous individuals using Google accounts with the names “Muto Hiroshi” and “Watanabe Nozomi” posted negative, one-star reviews on the Google Maps review page associated with the clinic. Dkt. No. 1 at 2-3; Dkt. No. 1-1 ¶¶ 12-14, Ex. 1 (Japanese original); Dkt. No. 1-3, Ex. A (English translation). Dr. Kumada says that in June 2021, a fourth individual using a Google account with the name “m NAGASE” posted a one-star rating, without a descriptive review, on the clinic’s review page. Dkt. No. 1 at 3; Dkt. No. 1-1 ¶ 14, Ex. 1.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Dr. Kumada believes that because the additional information regarding his clinic’s location points to a site near to a different ophthalmology clinic, a competitor edited the location to confuse Dr. Kumada’s patients and prevent them from finding his clinic’s correct location. Dkt. No. 1 at 3; Dkt. No. 1-1 ¶¶ 18, 20. Dr. Kumada also believes that a competitor of his clinic posted the subject negative ratings and reviews because they were all posted at around the same time. Dkt. No. 1 at 3; Dkt. No. 1-1 ¶ 19. Dr. Kumada contends that the location edit was made to interfere with his business, that the negative ratings and review are defamatory, and that he intends to file a lawsuit in Japan against the Google account user(s) for defamation and for interference with business. Dkt. No. 1 at 4; Dkt. No. 1-1 ¶¶ 22-23; Dkt. No. 1-2 ¶ 6. Dr. Kumada requests permission to serve a subpoena on Google for four categories of documents (discussed below) seeking personal identifying information (“PII”) “such as names, addresses, telephone numbers, and e-mail addresses, or information that will lead to the discovery of PII such as access log (the IP address and timestamp) for very limited periods of time, which information is stored by Google in the ordinary course of its business.” Dkt. No. 1 at 10; Dkt. No. 1-2 ¶¶ 17-21.

Dr. Kumada’s application relies on his own declaration, as well as the declaration of

1 Kazuyuki Yasuho, an attorney licensed in Japan. Dkt. Nos. 1-1, 1-2.

2 **II. LEGAL STANDARD**

3 Pursuant to 28 U.S.C. § 1782, a district court may order the production of documents or  
4 testimony for use in a foreign legal proceeding, unless the disclosure would violate a legal  
5 privilege. 28 U.S.C. § 1782(a); *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 246–  
6 47 (2004). The statute may be invoked where: (1) the discovery is sought from a person residing  
7 in the district of the court to which the application is made; (2) the discovery is for use in a  
8 proceeding before a foreign tribunal; and (3) the applicant is a foreign or international tribunal or  
9 an “interested person.” *Intel*, 542 U.S. at 246.

10 A district court is not required to grant an application that meets the statutory criteria, but  
11 instead retains discretion to determine what discovery, if any, should be permitted. *Id.* at 264. In  
12 exercising that discretion, the court considers several factors:

13 (1) whether “the person from whom discovery is sought is a participant in the foreign  
14 proceeding”;  
15 (2) “the nature of the foreign tribunal, the character of the proceedings underway abroad,  
16 and the receptivity of the foreign government or the court or agency abroad to U.S.  
17 federal-court judicial assistance”;  
18 (3) whether the discovery request “conceals an attempt to circumvent foreign proof-  
19 gathering restrictions or other policies of a foreign country or the United States”; and  
20 (4) whether the discovery requested is “unduly intrusive or burdensome.”

21 *Id.* at 264–65.

22 A district court’s discretion is guided by the twin aims of § 1782: providing efficient  
23 assistance to participants in international litigation, and encouraging foreign countries by example  
24 to provide similar assistance to U.S. courts. *Schmitz v. Bernstein Liebhard & Lifshitz LLP*, 376  
25 F.3d 79, 84 (2d Cir. 2004). The party seeking discovery need not establish that the information  
26 sought would be discoverable under the governing law in the foreign proceeding or that United  
27 States law would allow discovery in an analogous domestic proceeding. *See Intel*, 542 U.S. at  
28 247, 261–63.

1 Applications brought pursuant to 28 U.S.C. § 1782 typically are considered on an ex parte  
2 basis, since ““parties will be given adequate notice of any discovery taken pursuant to the request  
3 and will then have the opportunity to move to quash the discovery or to participate in it.”” *IPCom*  
4 *GmbH & Co. KG v. Apple, Inc.*, 61 F. Supp. 3d 919, 922 (N.D. Cal. 2014) (quoting *In re Republic*  
5 *of Ecuador*, No. C10-80225 MISC CRB (EMC), 2010 WL 3702427, at \*2 (N.D. Cal. Sept. 15,  
6 2010)). “Consequently, orders granting § 1782 applications typically only provide that discovery  
7 is ‘authorized,’ and thus the opposing party may still raise objections and exercise its due process  
8 rights by challenging the discovery after it is issued via a motion to quash, which mitigates  
9 concerns regarding any unfairness of granting the application *ex parte*.” *In re Varian Med. Sys.*  
10 *Int'l AG*, No. 16-mc-80048-MEJ, 2016 WL 1161568, at \*2 (N.D. Cal. Mar. 24, 2016).

11 Unless the district court orders otherwise, the discovery the court authorizes must be  
12 obtained in accordance with the Federal Rules of Civil Procedure. 28 U.S.C. § 1782(a); *In re*  
13 *Letters Rogatory from Tokyo Dist. Prosecutor's Office, Tokyo, Japan*, 16 F.3d 1016, 1020 (9th  
14 Cir. 1994).

### 15 III. DISCUSSION

#### 16 A. Statutory Requirements

17 Dr. Kumada’s application satisfies the statutory requirements of 28 U.S.C. § 1782(a).  
18 First, the subpoena seeks discovery from Google, which has its principal places of business in the  
19 Northern District of California. Second, Dr. Kumada requests this discovery for use in a civil  
20 action for defamation and for interference with business that he says he will file in Japan as soon  
21 as he learns the identity of the Google account user(s) responsible for posting the incorrect  
22 location information and the negative ratings and reviews. Dkt. No. 1 at 4. Crediting that  
23 assertion, this proceeding before a foreign tribunal appears to be within reasonable contemplation.  
24 See *Intel*, 542 U.S. at 259 (adjudicative proceedings need not be pending or imminent, so long as  
25 they are within reasonable contemplation). Third, Dr. Kumada, as the putative plaintiff in the  
26 contemplated civil action, is an interested person within the meaning of the statute.

1                   **B. Intel Factors**

2                   Even if the Court has the authority to grant Dr. Kumada's § 1782 application, that does not  
3 mean the Court is required to do so. *Intel*, 542 U.S. at 247. In determining whether judicial  
4 assistance under § 1782 is appropriate, the Court must consider the additional *Intel* factors.

5                   **1. Participation of target in the foreign proceeding**

6                   Although this factor addresses whether the person from whom discovery is sought is a  
7 party to the foreign proceeding, "the key issue is whether the material is obtainable through the  
8 foreign proceeding." *In re Varian Med. Sys.*, 2016 WL 1161568, at \*3 (internal quotations and  
9 citation omitted).

10                  According to the application, Google will not be a party to the civil action Dr. Kumada  
11 plans to bring in Japan, and the documents Dr. Kumada seeks by subpoena are located in the  
12 United States. Dkt. No. 1 at 7; Dkt. No. 1-2 ¶ 13. Dr. Kumada contends that such evidence is  
13 outside the reach of the Japanese courts' jurisdiction. Dkt. No. 1 at 8; Dkt. No. 1-2 ¶ 13. In these  
14 circumstances, the need for assistance pursuant to § 1782(a) is greater than it would be in  
15 circumstances where the foreign tribunal may order parties appearing before it or third parties  
16 within its jurisdiction to produce evidence. *Intel*, 542 U.S. at 264. The Court finds that this factor  
17 weighs in favor of authorizing service of the subpoena.

18                  **2. Receptivity of foreign tribunal to U.S. judicial assistance**

19                  Under this factor, the Court considers "the nature of the foreign tribunal, the character of  
20 the proceedings underway abroad, and the receptivity of the foreign government or the court or  
21 agency abroad to U.S. federal-court judicial assistance." *Intel*, 542 U.S. at 264. "This factor  
22 focuses on whether the foreign tribunal is willing to consider the information sought." *In re*  
23 *Varian Med. Sys.*, 2016 WL 1161568, at \*4. "[I]f there is reliable evidence that the foreign  
24 tribunal would not make any use of the requested material, it may be irresponsible for the district  
25 court to order discovery, especially where it involves substantial costs to the parties involved." *Id.*  
26 (internal quotations and citation omitted). Courts have denied requests for discovery where the  
27 foreign tribunal or government expressly says it does not want the U.S. federal court's assistance  
28 under § 1782. *See, e.g.*, *Schmitz*, 376 F.3d at 84-85 (affirming the denial of discovery where the

1 German government expressly objected to the information sought due to concerns that it would  
2 jeopardize an ongoing German criminal investigation, as well as German sovereign rights); *In re*  
3 *Ex Parte Appl. of Qualcomm Inc.*, 162 F. Supp. 3d 1029, 1040-41 (N.D. Cal. 2016) (concluding  
4 that this *Intel* factor weighed heavily against discovery where the Korean Fair Trade Commission  
5 filed an amicus brief stating that it had no need or use for the requested discovery).

6 Here, Dr. Kumada’s Japanese counsel attests that he is “not aware of any restrictions  
7 imposed by or any policies under Japanese law limiting U.S. federal court judicial assistance for  
8 the purposes herein and in the Application.” Dkt. No. 1-2 ¶ 14. Additionally, counsel states that  
9 based on his “experience as a lawyer qualified to practice law in Japan, Japanese courts are  
10 receptive to assistance in discovery by U.S. federal courts, including discovery of PII of  
11 individuals posting anonymous online reviews.” *Id.* ¶ 15.

12 In the absence of evidence that a Japanese court would object to Dr. Kumada’s obtaining  
13 and using the information sought in the subpoena, or that it would object more generally to the  
14 judicial assistance of U.S. federal courts, the Court concludes that this factor weighs in favor of  
15 authorizing service of the subpoenas.

### 16 3. Circumvention of proof-gathering restrictions

17 Under this factor, the Court considers whether Dr. Kumada’s request for discovery  
18 “conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a  
19 foreign country or the United States.” *Intel*, 542 U.S. at 265. “A perception that an applicant has  
20 ‘side-stepped’ less-than-favorable discovery rules by resorting immediately to § 1782 can be a  
21 factor in a court’s analysis.” *In re Varian Med. Sys.*, 2014 WL 1161568, at \*5 (quoting *In re*  
22 *Cathode Ray Tube (CRT) Antitrust Litig.*, No. C07-5944-SC, 2013 WL 183944, at \*3 (N.D. Cal.  
23 Jan. 17, 2013)). Courts have found that this factor weighs in favor of discovery where there is  
24 “nothing to suggest that [the applicant] is attempting to circumvent foreign proof-gathering  
25 restrictions.” *In re Google, Inc.*, No. 14-mc-80333-DMR, 2014 WL 7146994, at \*3 (N.D. Cal.,  
26 Dec. 15, 2014); *see also In re Eurasian Natural Resources Corp. Ltd.*, No. 18-mc-80041-LB, 2018  
27 WL 1557167, at \*3 (N.D. Cal., Mar. 30, 2018) (finding that the third *Intel* factor weighed in favor  
28 of discovery where there was “no evidence” of an attempt to circumvent foreign proof-gathering

1 restrictions or policies).

2 As noted above, Dr. Kumada's Japanese counsel attests that he is aware of no restrictions  
3 or policies under Japanese law that would limit the gathering of the evidence Dr. Kumada seeks  
4 here. Dkt. No. 1-2 ¶14. Additionally, he states that Dr. Kumada "is not attempting to circumvent  
5 any foreign proof-gathering restrictions or other policies of Japan or the United States." *Id.* ¶ 16.  
6 In the absence of contrary information regarding the procedures acceptable to the Japanese courts  
7 for obtaining the information Dr. Kumada seeks from Google, the Court concludes that this factor  
8 also weighs in favor of authorizing service of the subpoena.

#### 9 **4. Unduly burdensome or intrusive discovery**

10 Under this factor, the Court considers whether the discovery is sought is "unduly intrusive  
11 or burdensome." *Intel*, 542 U.S. at 265. Dr. Kumada's proposed subpoena seeks four categories  
12 of documents:

13 1. ALL DOCUMENTS showing the following information ever  
14 registered with EACH ACCOUNT:

- 15 (i) names;
- 16 (ii) physical, billing, shipping, or ALL other addresses;
- 17 (iii) recovery, authentication, or ALL other e-mail addresses;
- 18 (iv) recovery, authentication, or ALL other telephone numbers
- 19 (v) ALL names and addresses of ALL credit cards registered  
20 to EACH ACCOUNT (but not the credit card number,  
expiration date, or card validation code);
- 21 (vi) ALL names, addresses, e-mail addresses, telephone  
22 numbers, and names of the payment methods (such as  
PayPal), for ALL non-credit card payment methods registered  
to EACH ACCOUNT.

23 2. ALL DOCUMENTS showing the following information as of the  
24 date that EACH ACCOUNT was created, and for the three-month  
25 period immediately preceding April 9, 2022 and until the date that  
26 you respond to this request: ALL access log (dates, times, and IP  
addresses) of EACH ACCOUNT.

27 3. ALL DOCUMENTS showing the following information ever  
28 registered with ALL Google Ads accounts or ALL other accounts that  
are controlled by you that EACH ACCOUNT has ever been used to  
login with (the "OTHER ACCOUNTS"):

- 1 (i) names;
- 2 (ii) physical, billing, shipping, or any other addresses;
- 3 (iii) recovery, authentication, or any other e-mail addresses;
- 4 (iv) recovery, authentication, or any other telephone numbers;
- 5 (v) ALL names and addresses of ALL credit cards registered  
6 to ALL of the OTHER ACCOUNTS (but not the credit card  
number, expiration date, or card validation code);
- 7 (vi) ALL names, addresses, e-mail addresses, telephone  
8 numbers, and names of the payment methods (such as  
PayPal), for ALL non-credit card payment methods registered  
to ALL of the OTHER ACCOUNTS; and
- 9 (vii) the type of ALL of the OTHER ACCOUNTS (such as a  
10 Google Ads account).

11 4. ALL DOCUMENTS showing the following information as of the  
12 date that ALL of the OTHER ACCOUNTS were created, and for the  
13 three-month period immediately preceding April 9, 2022 and until the  
14 date that you respond to this request: ALL access log (dates, times,  
15 and IP addresses) of ALL of the OTHER ACCOUNTS.

16 Dkt. No. 1, Ex. B at 2-3.

17 Dr. Kumada's proposed subpoena appropriately does not seek the content of any  
18 communications associated with the accounts at issue. *See, e.g., Optiver Australia Pty. Ltd. v.*  
19 *Tibra Trading Pty. Ltd.*, No. C 12-80242 EJD (PSG), 2013 WL 256771, at \*2-3 (N.D. Cal. Jan.  
20 23, 2013) (discussing prohibitions of Stored Communications Act, 18 U.S.C. § 2701 *et seq.*). Nor  
21 does it request the users' credit card numbers, expiration dates, or validation codes.

22 Dr. Kumada does not say whether the information he seeks is confidential to the account  
23 users at issue, but the Court assumes that it is. For the reasons discussed above, some degree of  
24 disclosure of such information is warranted. Dr. Kumada has shown sufficient need for IP  
25 addresses associated with the Google accounts (particularly if the PII provided for the accounts  
26 might be false) and for information regarding the times when those IP addresses were used to  
27 access the accounts. Dkt. No. 1-2 ¶¶ 18(h), 19. In addition, Dr. Kumada has demonstrated a need  
28 for more recent access logs based on information suggesting Google may systematically delete  
access logs after several months. *Id.* ¶¶ 18(i)-(k). But Dr. Kumada's broad-ranging requests for  
all potentially identifying information is overbroad. Moreover, the requests for "access logs" and

1 login history from the accounts, spanning three months before the application to the date of  
2 Google's response to the subpoena, is not adequately justified. Accordingly, this Court finds that  
3 Dr. Kumada should be permitted to serve a subpoena on Google, subject to the following  
4 modifications: the subpoena may request only (1) documents sufficient to identify all names and  
5 contact information for the Google user(s) at issue, rather than all documents containing  
6 duplicative instances of that information; and (2) documents sufficient to identify each IP address  
7 used to access the account(s) and the dates and times at which each was used during the period of  
8 time the account users posted negative ratings and reviews or added information regarding the  
9 Clinic's location (*i.e.*, September 2020 through June 2021) and for the 60-day period preceding  
10 Google's response to the subpoena. *See In re Anahara*, No. 22-mc-80063-JCS, 2022 WL 783896,  
11 at \*4 (N.D. Cal. Mar. 15, 2022) (imposing limitations on subpoena).

12 **IV. CONCLUSION**

13 Dr. Kumada's application meets the statutory criteria for an order authorizing service of  
14 the proposed subpoenas. In addition, the factors that inform a court's exercise of discretion under  
15 *Intel* also favor authorizing service of the subpoena, with some modification as discussed above.

16 The Court ORDERS the Clerk of Court to reassign this matter to the district judge who  
17 was the general duty district judge on the date Dr. Kumada's application was filed. For the  
18 reasons explained above, the Court RECOMMENDS that Dr. Kumada's application be granted as  
19 modified.

20 Further, the Court RECOMMENDS that the district judge to whom the matter is  
21 reassigned include the following direction in the order finally disposing of this application:

22 "This order does not foreclose a motion to quash or further modify the subpoena by  
23 Google following service or by the Google account holder or account user whose identifying  
24 information is sought. The Court orders Dr. Kumada and Google to comply with the following  
25 requirements to ensure all interested persons have an opportunity to contest the subpoena if they  
26 wish:

27 1. At the time of service of the subpoena, Dr. Kumada must also serve a copy of this  
28 order on Google.

United States District Court  
Northern District of California

2. Within 10 calendar days of service of the subpoena and this order, Google shall notify the account holder(s) or account user(s) within the scope of the subpoena that their identifying information is sought by Dr. Kumada, and shall serve a copy of this order on each such person.
3. Google and/or any person whose identifying information is sought may, within 21 days from the date of the notice, file a motion in this Court contesting the subpoena (including a motion to quash or modify the subpoena).
4. Alternatively, any person whose identifying information is sought may, within 21 days from the date of the notice, advise Google in writing of any objections he or she has to disclosure of the information and the bases for any such objections. Within 10 days of receipt of any such objections, Google shall so advise the Court.
5. If any person contests the subpoena or objects to any portion of it, Google shall preserve, but not disclose, the information sought by the subpoena pending resolution of that contest or objection.
6. Any information Dr. Kumada obtains pursuant to the subpoena may be used only for purposes of the anticipated action for defamation, and Dr. Kumada may not release such information or use it for any other purpose, absent a Court order authorizing such release or use.”

Any party may serve and file objections to this report and recommendation within 14 days after being served. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; Civ. L.R. 72-3.

Dated: June 2, 2022

Virginia K. DeMarchi  
VIRGINIA K. DEMARCHI  
United States Magistrate Judge